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No. 91-299

In The

Supreme Court of the United States

October Term, 1991

CITY OF ZION, *et al.*,

Petitioners,

vs.

CLINT W. HARRIS, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

RICHARD MARTIN GUTMAN
Attorney for Respondents
54 Parker Street
Carlisle, Pennsylvania 17013-2818
(717) 243-2286

932
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QUESTION PRESENTED

Whether a government's continuous and pervasive use of one particular religious sect's religious banner and religious declaration as the entire center portion of that government's official seal violates the Establishment Clause of the First Amendment.

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RESPONDENTS' BRIEF IN OPPOSITION

CONSTITUTIONAL PROVISION AND RULES INVOLVED

This action is based upon the Establishment Clause of the First Amendment of the United States Constitution which provides: "Congress shall make no law respecting an establishment of religion . . . "

Also involved are General Rules 12(l) and (m) of the United States District Court for the Northern District of Illinois, which are set forth in Respondents' Appendix E at 6ra.

STATEMENT OF THE CASE

City petitioners omitted the following: Prior to the 1902 adoption of the City of Zion corporate seal, the Christian Catholic Church of Zion had a religious banner, called the "Zion Banner" (R. Doc. 61, Plaintiffs' Statement of Material Facts, ¶ 20). Respondents' Appendix A (1ra), attached hereto, contains a picture of the Christian Catholic Church's Zion Banner in the September 1, 1990 issue of *Leaves of Healing*, the official publication of the Christian Catholic Church (R. Doc. 61, Ex. 9-3). The Christian Catholic Church's Zion Banner occupies the center section of the City of Zion's corporate seal (App. 30a). The Zion Banner remains the symbol of the Christian Catholic Church (R. Doc. 61, Plaintiffs' Statement of Material Facts, ¶ 28) and is displayed on the name plate of that religious sect's official publication, *Leaves of Healing* (R. Doc. 61, Ex. 8). *See* attached Respondents' Appendix B at 2ra.

The petition also omitted the following facts concerning the meaning of the seal's and emblem's phrase "God Reigns". While presenting his proposed seal to the Zion City Council in 1902, Rev. Dowie stated

> May God bless the seal and may every generation that comes, as they see upon every official document just these two words, "God Reigns," know that this is God's City, the City of Jehovah, the Zion of the Holy one of Israel."

* * *

> Let the officer who uses this seal feel as he pulls this lever and makes this impression, "God Reigns," that the document must be such a one as God approves. May every commission of every officer which bears the seal of this city be looked upon as a solemn thing; that it is a commission to bear such authority, however small or large, as God's minister — God's minister in law — God's minister in the Eternal Covenant in a measure.

(R. Doc. 61, Ex. 11-4,-5)

The petition on pages 5 and 6 asserts that "the seal has been maintained by the current City Council for historical reasons," citing a 1986 City Council resolution. After studying the legislative history, both the district court and the court of appeals expressly rejected the City petitioners' assertion (App.66a, 25a). The Zion City Council voted to retain the Zion seal in response to a challenge to the seal's legality, and none of the Zion City Council members stated his reason for so voting (R. Doc. 68, Ex. K 70-71).

City petitioners omitted that the seal also appears on the City flag, the City Council chambers and City letterhead (App. 6a, 59a).

There is no basis in the record for the petitioners' assertion on page 13 that the Zion City Council contains no members of the Christian Catholic Church.

On page 5 the petition quotes the Cook affidavit for the assertion that the Blue Laws "have long since been repealed." In fact, Cook alleged that the Blue Laws "either have been repealed or have fallen into disuse" (R. Doc. 68, Cook Aff.¶ 17).

REASONS FOR DENYING THE WRIT

Regarding the issue of standing, City petitioners' version of the facts is false. Moreover, City petitioners have twice waived their argument by making it neither in the district court nor in the court of appeals. (While a challenge to the legal sufficiency of plaintiffs' allegation of standing can be made at any time during the lawsuit, a challenge to the factual basis of plaintiffs' standing must be made in the district court and again in the appellate brief if it is to be considered by the Supreme Court.)

As to the Establishment Clause issues, the City seal, emblem and logo consist entirely or principally of the Christian Catholic Church's religious banner and religious declaration. Therefore, those City symbols communicate the City's exclusive preference for one particular religious sect of one particular religion over all other religious sects and religions. Thus, unlike the nonsectarian prayer in *Lee v. Weisman*, the City's symbols are unconstitutional under any conceivable interpretation of the Establishment Clause.

The City's defense of commemorative purpose does not eliminate the City seal's partiality towards one faith. Both the district court and the court of appeals concluded that the City seal did not have a commemorative purpose. Moreover, even if it did have a commemorative function, that clearly is not its only function. The City can communicate its historic origin without symbolically equating itself with, or promoting, the contemporary Christian Catholic Church and without identifying itself with, or promoting, contemporary Christianity.

While the discriminatory nature of the seal, emblem and logo is sufficient in itself to invalidate them, they are also coercive. They are directly coercive in that respondent Harris was required to place on his car a vehicle sticker containing the emblem. They

are indirectly coercive because of the close identification with the government and the pervasiveness.

In addition, the unique factual situation here suggests that any Supreme Court adjudication on the merits would give little guidance in other lawsuits.

Finally, the petition does not cite a single conflicting judicial decision.

I.

STANDING

A. City petitioners' assertions regarding respondent Harris are false.

The petition at page 21 alleges that (1) "Harris had been recruited for the litigation;" (2) "made false allegations as to being required to display a vehicle sticker with the Zion Seal;" (3) "claimed injuries which are self-imposed;" and (4) "is a hypersensitive zealot." All four conclusions are false.

(1) Harris moved to the City of Zion because he needed to live in northern Lake County for work reasons and could find affordable rent in that area only in the City of Zion (R. Doc. 68, Ex. E, Inter. 9(b); Sherman Dep. 55-56). He did not move to the City of Zion to file the lawsuit (R. Doc. 69, Harris Dep. 63). Harris did not discuss with Sherman the possibility of a lawsuit until after Harris was given a ticket by Zion police officers for not displaying a vehicle tax sticker on the car he was driving (R. Doc. 68, Sherman Dep. 59).

The assertion of the appellate dissent that "Harris related in his deposition that he had been recruited by the Society of Separationists as a potential plaintiff" is false.

(2) In an effort to depict respondent Harris as a fabricator, the petition notes that although Harris' complaint alleges that he had been required to place a Zion vehicle sticker on his automobile, Harris "admitted in his deposition that he did not own an automobile and did not currently have a car in Zion" (page 23). Thus, assert the City petitioners at page 23 Harris' allegation that he was required to place a vehicle sticker on his auto was "proven to be false." City petitioners fail to inform this Court that on the very deposition transcript pages (R. Doc. 68, Harris Dep. 95-95) that they cite as proof of Harris' falsehood, Harris explained that although he did not currently have a car, he had one at the time he was required to place a vehicle sticker on his car. (These deposition pages are attached hereto as Respondents' Appendix C at 3-4ra.) Thus, City petitioners have selectively quoted from a deposition transcript to give the false impression that respondent Harris lied.

Moreover, City petitioners know that respondent Harris was telling the truth in alleging that he had possessed a car and was required to place a Zion City vehicle sticker on its windshield since City petitioners' own police officers had stopped Harris while he was driving his car and forced him to purchase a vehicle sticker (R. Doc. 68, Sherman Dep. 59), and City petitioners introduced at Harris' deposition, and attached to their motion for summary judgment, a copy of Harris' vehicle sticker tax receipt initialed by the Zion City Clerk's Office (attached hereto as Respondents' Appendix D at 5ra) which identifies Harris' car as a 1976 blue 2-door Toyota Corrolla (R. Doc. 68, Harris Dep. 96, Ex. E).

Furthermore, respondent Harris reminded City petitioners of the foregoing in his answer to their petition for rehearing in the court of appeals, yet they persist in falsely branding respondent Harris as a fabricator.

(3) Since respondent Harris did not move to the City of Zion to expose himself to the seal, his injuries are not self-imposed. *See* (1) above.

(4) City petitioners' assertion that Harris is "a hypersensitive zealot" is a reflection of their inability to empathize with non-Christians. Certainly, the reactions of Harris are typical of plaintiffs in Establishment Clause litigation involving official governmental sponsorship of Christian symbols and practices (App. 14-15a).

B. City petitioners have twice waived the factual question as to whether Harris is "a transient plaintiff who was recruited".

Moreover, City petitioners have twice waived the factual issue as to whether respondent Harris is "a transient plaintiff who was recruited for the litigation" by failing to raise it either in the district court or the court of appeals.

While the legal sufficiency of a plaintiff's allegations of standing can be considered by the Supreme Court whether or not defendant raised it below, any factual challenge to standing must be made by defendant in the district court and then again in the court of appeals if it is to be considered by the Supreme Court. As this Court has noted, " . . . if the plaintiffs' 'allegations [of standing] were in fact untrue, then the [defendants] should have moved for summary judgment on the standing issue and demonstrated to the District Court that the allegations were a sham and raised to genuine issue of fact.' " *Gwaltney v. Chesapeake Bay Foundation*, 484 U.S. 49, 66 (1987), *quoting United States v. SCRAP*, 412 U.S. 669, 689 (1973).

At no time in the district court did City petitioners ever argue that Harris lacked standing because he is a transient plaintiff who was recruited to file this lawsuit. That defense was never asserted,

argued or adjudicated. At the time of the filing of City petitioners' motion for summary judgment, they knew all the facts which they now assert establish the allegedly sham nature of Harris' allegations of standing. Yet the City's motion for summary judgment contained no argument at all that Harris lacked standing (R. Doc. 66). Not having done so in the district court, the City petitioners can not now so argue in the Supreme Court. *Dothard v. Rawlinson*, 433 U.S. 321, 323 n.1 (1977).

Similarly, City petitioners never raised the issue in their appellate Brief And Appendix of Defendants-Appellants or their Reply Brief of Defendants-Appellants. Therefore, the issue was not, and could not be, adjudicated by the appellate majority. *Lim v. Central DuPage Hosp.*, 871 F.2d 644, 647-48 (7th Cir. 1989). City petitioners failed to charge Harris with being recruited until the rebuttal portion of their appellate oral argument, and even then their counsel noted, "I am not saying that this is impermissible." Issues not presented to or ruled upon by the court of appeals will not be considered by the Supreme Court. *EEOC v. FLRA*, 476 U.S. 19, 24 (1986). It is untimely to assert an argument for the first time in the motion for rehearing in the court of appeals. *Hoover v. Ronwin*, 466 U.S. 558, 574 n. 25 (1984).

II.

THE ESTABLISHMENT CLAUSE

A. This lawsuit, unlike *Lee v. Weisman*, involves a government's continuous identification with one particular religious sect of one particular religion in preference to all other religious sects and religions.

The petition suggests that it be deferred until after a decision in *Lee v. Weisman, cert. granted*, 111 S. Ct. 1305 (1991). But

a government emblem consisting solely of one particular religious sect's banner and declaration is fundamentally distinct from a private cleric's nonsectarian invocation and benediction at a public school graduation.

First, the case at bar, unlike *Weisman*, involves a preference for one particular religion and one particular sect of that religion over all other religious sects and religions. The Zion City emblem consists solely of the current religious banner of the Christian Catholic Church (which includes the principal symbol of Christianity as well as other Christian symbols) and a declaration expressing that sect's religious belief in theocracy (App. 31a, 26-27a; R. Doc. 61, Ex. 11-4,-5). The entire center portion of the City seal is occupied by the Christian Catholic Church's religious banner and declaration (App. 30a), and the City logo is a stylized version of the Christian Catholic Church's religious banner (App. 32a).

Even those who would overturn the standard of *Lemon v. Kurtzman*, 403 U.S. 602 (1971) and would permit governmental preference for religion over irreligion, affirm that the Establishment Clause "forbade preference among religious sects or denominations." *Wallace v. Jaffree*, 472 U.S. 38, 106 (1985) (Rehnquist, J., dissenting). In the Supreme Court's most recent pronouncement on the Establishment Clause, Justice Kennedy, with whom Justice Scalia joined, indicated that the Establishment Clause required that a government accommodation of religion be a neutral one. *Board of Educ. of Westside Com. Schools v. Mergens*, ____ U.S. ____, 110 S. Ct. 2356, 2377 (1990).

On page 26, the petition cites a law review article by Professor Michael McConnell for the proposition that, "There is a historical basis for requiring that government coercion be a necessary element for an Establishment Clause violation." In fact, Professor McConnell stated the opposite in that article — that the

Establishment Clause forbade government discrimination among religious sects irrespective of the absence of coercion.

> Strong evidence suggests that discrimination among religious sects also was proscribed by the establishment clause, but I have run across no persuasive evidence that the Framers of the first amendment considered evenhanded support of all religions or religion in general, in the absence of a coercive impact, an establishment of religion.

McConnell, *Coercion: The Lost Element of Establishment*, 27 Wm. & Mary L. Rev. 933, 939 (1986).

If the City's seal, emblem and logo were constitutional, governmental bodies throughout the nation could officially identify themselves exclusively with Christianity and/or a particular Christian sect, thereby ordaining an officially-preferred religion and/or an officially-preferred religious sect.

Second, the *Zion* case involves closer identification between Church and State then does *Weisman* since the religious symbols in *Zion* are placed on the official symbol of government power. The identification with government in *Weisman*, which involves private clerics, is much more attenuated.

Third the challenged religious symbols in *Zion* are located throughout the City on every street sign, every resident's automobile windshield, the Zion water tower, all City vehicles, and the shoulder patches of the City police officers and fire fighters. In contrast, *Weisman* involves graduation ceremonies occurring once a year in a very limited number of locations.

Since *Zion* and *Weisman* differ so greatly factually, it is unlikely that *Weisman* could serve as precedent for *Zion*.

Moreover, even if *Weisman* were to result in a new Establishment Clause standard, it would have no effect on the results in *Zion*. The facts here, involving both discrimination (*see* above) and coercion (*see* II.C. below), would be unconstitutional under any conceivable interpretation of the Establishment Clause.

B. The City seal, emblem and logo do not merely commemorate the City's religious origin; they symbolically promote the contemporary Christian Catholic Church and Christianity.

The petition argues that the City seal, emblem and logo do not express preference for Christianity in general or the Christian Catholic Church in particular because they merely commemorate the City's origin. City petitioners point to a 1986 Zion City Council resolution. But after studying the legislative history of the 1986 resolution and the 1902 ordinance, both the district court and the court of appeals concluded that the seal does not have a commemorative purpose (App. 66-67a, 25-26a).

Moreover, even if the seal did have a commemorative purpose, it would still be unconstitutional because, as the court of appeals noted, "These symbols transcend mere commemoration" (App. 27a). The City seal, emblem and logo do not merely commemorate the origin of the City as would a depiction of the founding of the City or a portrait of its founder, Rev. Dowie. Instead, they symbolically equate the City with the contemporary Christian Catholic Church and identify it with contemporary Christianity. The Zion Banner is currently the symbol of the Christian Catholic Church (Respondents' Appendix B at 2ra;R. Doc. 61, Plaintiffs' Statement of Material Facts, ¶ 28[1]),

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1. City petitioners admitted the truth of ¶ 28 of Plaintiffs' Statement of Material Facts that, "The Zion Banner has remained the symbol of the Christian Catholic Church," by failing to file a specific denial of ¶ 28 with citation to the record as required by N.D.Ill. General Rule 12(m).

(Cont'd)

and the Cross is currently the principal symbol of Christianity. The City seal, emblem and logo give the appearance of being expressions of current relationships, not historic ones.

At the very least, the City seal, emblem and logo promote the contemporary Christian Catholic Church, Christianity and their religious beliefs. While it may be constitutional to depict on a government seal scenes of the settlement of that locale even if that settlement were religiously motivated, those historic circumstances do not constitutionally justify having the settlers religion and religious beliefs featured on the government's official seal. *Friedman v. Board of County Com'rs of Bernalillo*, 781 F.2d 777 (10th Cir. 1985) (in banc), *cert. denied*, 476 U.S. 1169 (1986) (county seal featuring Christian Cross unconstitutional despite the historic significance of Catholicism in the founding of that New Mexico county).

If this Court were to accept City petitioners logic, it would also be required to permit the United States government to replace the Great Seal of the United States with a Great Seal whose center section consisted solely of the religious banner of the Pilgrims of Plymouth Colony who settled this nation in 1620 seeking religious freedom. The same would apply to a seal of the State of Utah whose center section consisted solely of the religious banner of the Church of Jesus Christ of Latter-day Saints.

(Cont'd)

In its Reply Brief Of Defendants-Appellants, City petitioners argued that they had no legal obligation to contravene ¶ 28 of plaintiffs' Statement of Material Facts because plaintiffs allegedly made no specific reference to the part of the record relied upon as required by General Rule 12(l). In fact, ¶ 28 specifically referred to an attached "Exhibit 8" which is reproduced here as Respondents' Appendix B.

C. Respondent Harris was coerced.

The petition argues in Section III that a writ of certiorari be issued because the *Lemon* standard should be replaced by a requirement of "direct or indirect government coercion" (p. 25). Respondents note in II.A. above that the proposed prohibition on coercion would be independent of the prohibition on government preference among religions, applicable to this case. Thus, the City seal, emblem and logo are unconstitutional whether or not they are coercive.

Furthermore, even if this Court were to decide to replace the *Lemon* standard with one solely prohibiting coercion, this lawsuit would not present a suitable opportunity to do so be cause it does involve coercion. The City directly coerced Harris to display a vehicle tax sticker, which contained the challenged emblem[2] (15a, 59a; Respondents' Appendix D at 5ra).

Harris was also indirectly coerced. In his dissent in *Allegheny*, Justice Kennedy recognized, and City petitioners agree on page 25, that forbidden coercion can be indirect as well as direct. Justice Kennedy favorably cited the Bernalillo County, New Mexico seal decision as an example of indirect coercion and indicated that he would hold unconstitutional a Christian Cross continuously and obtrusively affixed onto a symbol of government power. *County of Allegheny v. ACLU*, 492 U.S. 573, 655-56 (1989). Similarly, in this case the banner and declaration of a particular Christian sect (which occupies the entire center portion of the seal), including a Christian Cross, are continuously and obtrusively affixed onto the symbol of government power.

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2. The *Wooly* solution, proposed by the petition on page 26, would in turn coerce Harris to cut out or cover up a part of his vehicle sticker and would coerce him to risk arrest for doing so (App. 15a, n. 8).

The petition's (and the appellate dissent's) argument on pages 26-27 that the Bernalillo, New Mexico seal case can be distinguished because it is allegedly based on Native Americans' coercive fear of Christians, is baseless. First, *Friedman* is not based upon the Native Americans' fear of Christians but rather on the broad principal that, "Religious minorities may not be made to feel like outsiders because of government's malicious or merely unenlightened endorsement of the majority faith" *Friedman*, 781 F.2d at 782. Second, Native Americans have been oppressed by Christians in Illinois as well as New Mexico. Third, *Friedman* also cited the oppression of Jews and Lebanese Moslems by Christians, phenomena as relevant to Zion, Illinois as Bernalillo County, New Mexico. *Id.* at 781.

Finally, on page 27 the petition argues that the lower court decision prefers "those who believe in no religion over those who do believe" in religion. That argument is as illogical as the argument that a judicial decision outlawing a municipal seal featuring the symbol of atheism would constitute a judicial preference for religious believers over atheists. Government neutrality concerning religion should not be equated with either support or opposition to religion.

D. The petition does not cite any conflicting decisions.

The petition does not cite a single judicial decision holding constitutional sectarian religious symbols on government seals.

On page 17 City petitioners cite judicial decisions which they incorrectly assert uphold government acknowledgement of sectarian religion. The City cites *Anderson v. Salt Lake City Corporation*, 475 F.2d 29 (10th Cir. 1973), a 1973 appellate decision, for the proposition that government can sponsor the Ten Commandments. The City omits any reference to the later Supreme Court decision, *Stone v. Graham*, 449 U.S. 39 (1980),

which held the opposite. The legislative prayer in *Marsh v. Chambers*, 463 U.S. 783 (1983), was not limited to that of one religion. The Sunday closing laws in *McGowan v. Maryland*, 366 U.S. 420 (1961) had lost their religious purpose. The religious training in *Zorach v. Clausen*, 343 U.S. 306 (1952), was not limited to one religion. The court oaths in *O'Haira v. Paine*, 312 F. Supp. 434 (W.D. Tex. 1969), were nonsectarian. *Eugene Sand & Gravel, Inc. v. City of Eugene*, 558 P.2d 338 (1976) was not a federal case. All the remaining cases cited by the City on page 17 involve the secular celebration of an official holiday.

The City's assertion on the bottom of page 17 that the courts have not treated Christian Crosses differently from nonsectarian religious symbols and proclaimations is incorrect. *ACLU v. City of St. Charles*, 794 F.2d 265 (7th Cir. 1986), *cert. denied*, 479 U.S. 961; *Friedman*, 781 F.2d 777, *cert. denied*, 476 U.S. 1169; *ACLU v. Rabun County Chamber of Commerce, Inc.*, 698 F.2d 1098 (11th Cir. 1983); *Gilfillan v. City of Philadelphia*, 637 F.2d 924 (3rd Cir. 1980); *Joki v. Bd. of Educ. of Schuylerville Cent. S.D.*, 745 F. Supp. 823 (N.D.N.Y. 1990); *Mendelson v. City of St. Cloud*, 719 F. Supp. 1065 (M.D. Fl.1989); *Jewish War Veterans v. United States*, 695 F. Supp. 3 (D.D.C. 1988); *ACLU of Miss. v. Miss. Stat. GSA*, 652 F. Supp. 380 (S.D. Miss. 1987); *Libin v. Town of Greenwich*, 625 F. Supp. 393 (D. Conn. 1985): *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984), *appeal dismissed*, 755 F.2d 426 (5th Cir. 1985), *cert. denied*, 474 U.S. 980 (1985).

On page 14 the petition asserts that the City's declaration "God Reigns" is merely a nonsectarian affirmation of the existence of a deity. As documented above in the Statement of the Case, "God Reigns" is a declaration of the Christian Catholic Church's sectarian religious belief in theocracy.

E. City petitioners have not demonstrated that this unique factual situation presents an important question.

City petitioners have not demonstrated that this unique factual situation presents an important question of federal law. There is no evidence that a significant precentage of government seals consist of, or even contain, sectarian religious imagery. Certainly, few lawsuit have concerned this subject matter.

Because this case involves such an extreme factual situation — (1) the banner of a particular religious sect and the principal symbol of a major religion; (2) permanent placement on the official symbol of government power; (3) pervasive display throughout the jurisdiction; and (4) the unusual religious origin of the municipality — any Supreme Court ruling on the merits would give little guidance to the lower courts in other cases.

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit should be denied.

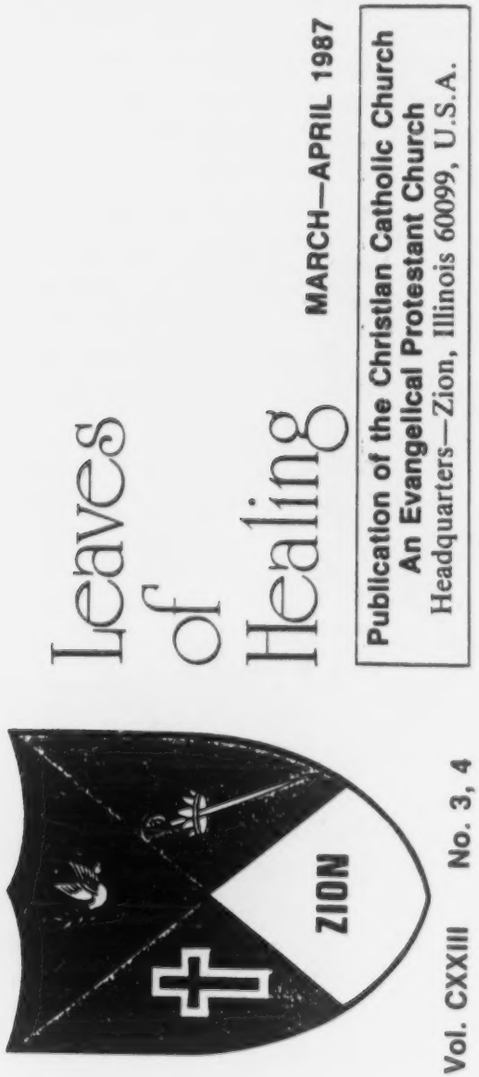
Respectfully submitted,

RICHARD MARTIN GUTMAN
Attorney for Respondents

Dated: September 11, 1991

APPENDIX A — ZION BANNER (1900)

APPENDIX B — ZION BANNER (1987)



APPENDIX C - EXCERPTS OF DEPOSITION OF CLINT W. HARRIS

[95] A. Yes.

Q. How much did you pay him when you leased it? A. Did I say I paid him?

Q. Well, you said you leased it from him. I assume that means you paid him. Did you? A. Actually, I didn't pay him in dollars. He's a carpenter and sometimes I would assist him in different jobs that require a carpenter's assistant.

Q. So, you essentially borrowed his car and helped him with jobs? A. I quess you can say that's a fair exchange. He let me use the car and I'm available when he needs a carpenter's assistant.

Q. Do you have any car registered in your name? A. No, and never has.

MS. ZIMMERMAN: Off the record.

(Whereupon, Harris Deposition Exhibit No. 4 for identification was so marked as requested.)

(Whereupon, a luncheon recess was taken.)

[96] (Whereupon, Harris Deposition Exhibit No. 5 for identification was no marked as requested.)

(Whereupon, Harris Deposition Exhibit No. 6 for identification was so marked as requested.)

By Ms. Zimmerman:

Appendix C

Q. Mr. Harris, do you currently have a car in Zion? A. No.

Q. Do you have any plans to get one? A. Yes.

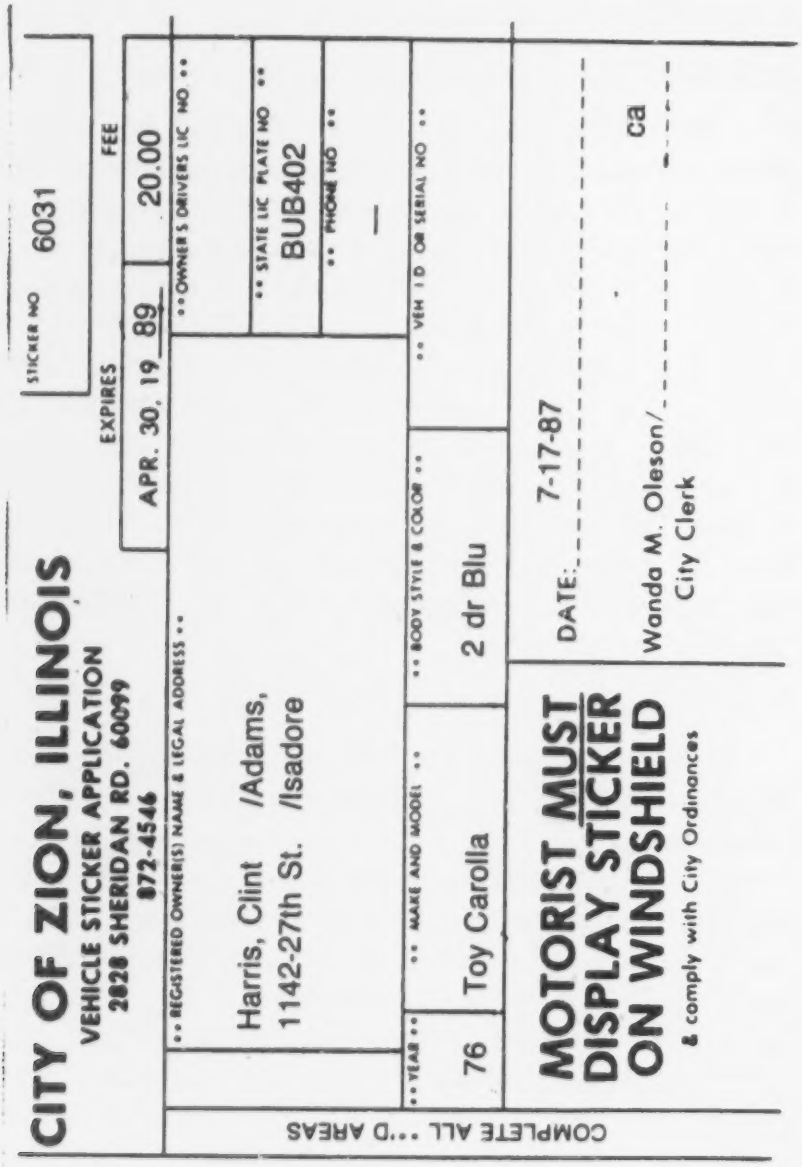
Q. Have you looked for one? A. Yes.

Q. When do you plan to get one? A. Actually, I've looked at one at home. My father's going to give me one.

Q. Are you planning to buy that from him? A. No. He's going to give it to me.

Q. When to you expect that to happen? A. I don't know. Maybe sometime in the next week or next two weeks. That's if it don't need a . . .

APPENDIX D — VEHICLE STICKER TAX RECEIPT



* Note: Typeset print on form has been substituted for handwritten matter.

APPENDIX E — GENERAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, RULES 12(l) AND (m)

l. Motions for summary judgment; Moving party.

With each motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure the moving party shall serve and file, in addition to the affidavits (if any) and other materials referred to in Rule 56(e) and a supporting memorandum of law, a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law including a description of the parties and all facts supporting venue and jurisdiction in this Court. That statement shall consist of short numbered paragraphs, including within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

m. Motions for summary judgment; Opposing party

Each party opposing a Rule 56 motion shall serve and file, together with opposing affidavits (if any) and other materials referred to in Rule 56(e) and a supporting memorandum of law, a concise response to the movant's statement. That response shall contain (1) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon, and (2) a statement, consisting of short numbered paragraphs, of any additional facts which require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.